

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
Washington, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AMERICAN CAST IRON PIPE COMPANY

Claim No. CU-0249

Decision No. CU-13

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$1,992.73 as presented by American Cast Iron Pipe Company, based upon a debt assertedly due from an enterprise nationalized by the Government of Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 80 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

(a) . . . losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States, . . .

Section 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss

and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as . . . (B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 percentum or more of the outstanding capital stock or other beneficial interest of such corporation or entity . . .

An officer of the claimant corporation has certified that the claimant was organized in the State of Georgia and that at all times between 1908 and presentation of this claim on July 19, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (A) of the Act.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest, including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba . . .

The record contains copy of claimant's invoice No. 3612 of August 31, 1959 reflecting the sale to Cia. Cubana de Electricidad of Havana, Cuba, on their order, of goods totalling \$1901.34, plus prepaid freight in the amount of \$91.39 increasing the total to \$1992.73. The terms were 30 days net. Claimant asserts that it has not been paid although the goods were delivered to the Company at Havana.

On July 6, 1960, the Government of Cuba issued Law No. 851 published in the Official Gazette of Cuba on July 7, 1960, authorizing the nationalization of concerns and properties of natural and juridical persons of the United States of America, or of concerns in which they

hold a majority interest. On August 6, 1960, the Cuban Government issued Resolution No. 1, pursuant to Law 851. Resolution No. 1 ordered the nationalization, by expropriation, and adjudicated to the Cuban State, in fee simple, the Compania Cubana de Electricidad, among others. According to a letter from the company's New York Office, dated October 5, 1960, the properties of the Company were seized by the Cuban Government on August 7, 1960.

Based on the foregoing and the entire record, the Commission finds that the Cia. Cubana de Electricidad of Havana, Cuba owed claimant the sum of \$1992.73; that the said company and its assets were nationalized by the Government of Cuba on August 7, 1960 pursuant to the aforesaid Law, and Resolution promulgated thereunder and that this debt of a nationalized enterprise constituted property as the term is used in Section 502(3) of the Act. Accordingly, it is concluded that claimant suffered a loss in the amount of \$1992.73 within the meaning of Title V of the Act as a result of the nationalization of the debtor company by the Government of Cuba.

An important question is whether interest should be included in losses on claims determined pursuant to Title V of the International Claims Settlement Act for the nationalization or other taking of property.

Title V of the International Claims Settlement Act of 1949, as amended, makes no provision concerning whether or not interest shall be included as a part of the amount of loss resulting from the nationalization or other taking of property by the Government of Cuba. However, the Commission is directed to determine the amount of loss in accordance with applicable substantive law, including international law. Therefore, this title must be construed in connection with other titles of the International Claims Settlement Act of 1949, as amended, which contain provisions for allowance of interest and which relate to claims based upon the nationalization or other taking of American-owned property by foreign governments.

The International Claims Settlement Act of 1949, as amended, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-42 (1958), contains only general terms with reference to interest. Section 7(a) of that Act authorizes and directs the Secretary of the Treasury to pay, as prescribed by Section 8, "an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest . . ." (64 Stat. 16 (1950), 22 U.S.C. § 1626(a) (1958) (Emphasis added)). And Section 8 of the Act, after providing for certain initial and additional payments on the principal of each award, directs the Secretary of the Treasury, "after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest." (64 Stat. 17 (1950), 22 U.S.C. § 1627(c) (1958) (Emphasis added)). Nowhere does the Act specify which awards should bear interest.

In a case of this nature, the Commission is expressly directed by Congress to apply "the applicable principles of international law, justice, and equity" (International Claims Settlement Act of 1949, as amended, 64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988).

Although some commissions have refused to allow interest in claims of this type on the ground that interest is a matter of contract which should be specifically provided for in the protocol (see Borchard, Diplomatic Protection of Citizens Abroad 428 (1928) and authorities cited therein), this Commission regards it as a settled principle of international law that "interest, according to the usage of nations, is a necessary part of a just national indemnification." (6 Moore, A Digest of International Law 1029 (1906), citing Davis, Notes, Treaty Vol. (1776-1887); Wirt. At. Gen., 1 Op. 28, Crittenden, At. Gen., 5 Op. 350; Geneva Award, 4 Papers Relating to the Treaty of Washington, 53).

"The award of interest is usually considered to be merely a part of the duty to make full reparation arbitral tribunals have felt that

it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest."

(Eagleton, The Responsibility of States in International Law 203-4 (1928)

[Emphasis added]).

The theories upon which interest is founded are varied. Some tribunals have expressed the idea that interest is given as compensation for the loss of the use of the principal during the period within which the payment thereof continues to be withheld (see Opinions of Commissioners, United States-Mexican General Claims Commission 189 (1927) (Illinois Central R.R. Co. v. United Mexican States)). Interest has been included by one author as a natural part of the compensation for the "improper withholding of satisfaction" (see Borchard, op. cit. supra, at 428).

Again, it has been said that the awarding of interest is in the nature of damages from the date of the loss, (Opinions of Mixed Claims Commission, United States and Germany 1925-1926, 62 (Consol. Ed. 1927) (Ad. Dec. No. 3)).

On whatever theory the awarding of interest is based, we are constrained to adhere to the international law principle, to which we deem proper to give effect, that interest must be regarded as a proper element of compensation. The Commission therefore concludes that the award of interest in the instant case is not only in conformity with the principles of international law, but is required by equity and justice, and should therefore be allowed.

The Commission is next faced with the problem of the rate of interest to be allowed. This rate has generally varied from three to six percent, although higher amounts have been granted on occasion. (See authorities cited in Borchard, op. cit. supra at 429.) The Mixed Claims Commission of the United States and Germany, supra, granted 5%; the Spanish-American Commission of 1871 allowed 8%. (For a list of commissions in which

Interest has been allowed on awards, together with the various rates of interest, see Ralston, International Arbitral Law and Procedure 82-87 (1910).

Although there is no settled rule as to the rate of interest, it is an appropriate exercise of the jurisdiction of the Commission to determine this rate in accordance with all the circumstances before it, including the applicable principles of international law, justice and equity. Its object in so doing is to arrive at a just and equitable compensation for the wrong. The Commission may also consider its own decisions concerning the applicable rate of interest in its prior international claims programs. In these programs, the Commission has adopted the figure of 6% as a traditional and customary interest rate for claims of this nature.

In light of this international law precedent, custom and tradition, the Commission therefore concludes that an award of interest in the present case at the rate of 6% is an appropriate, equitable and just measure of compensation under all the circumstances.

Similarly, there is no settled rule in universal effect as to the period during which the interest shall run. Various terminal dates have been applied by different commissions, including the date of the original injury, the date of the notice of the claim, or the date of payment. (See authorities cited in Eagletch, op. cit. supra at 204-05; Borchard, op. cit. supra, at 428-29.) The Commission notes, however, that the prevailing opinion in international law is that such interest should run from the date the claim arose until the "date of payment" (ibid.). (See the Claim of John Hadio Proach, FO-3197, 17 FCSC Semiann. Rep. [Jul.-Dec. 1962] 47.) The Commission notes further that the date the claim arose in this case is the date of loss.

Title V makes no provision for payment of claims against the

Government of Cuba. The statute provides for receipt and determination with respect to validity and amount of claims which is for evaluation purposes only, settlement being left to a future date. Nevertheless, the Commission concludes that interest from the date of loss to the date of settlement is a part of claimant's loss.

Accordingly, the Commission further concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from August 7, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN CAST IRON PIPE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Nine Hundred ninety-two Dollars and Seventy-three Cents (\$1,992.73), with interest thereon at 6% per annum from August 7, 1960 to the date of settlement.

Done at Washington, D. C.
and entered as the Proposed
Decision of the Commission

OCT 19 1966

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

AMERICAN CAST IRON PIPE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0249

Decision No. CU -13

ORDER AND PROPOSED DECISION

This claim against the Government of Cuba was the subject of a Proposed Decision of the Commission issued on October 19, 1966, which was entered on November 30, 1966, as the Commission's Final Decision on the claim. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of October 19, 1966, and the Final Decision of November 30, 1966, be and they are hereby set aside and the following Proposed Decision is entered:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,992.73 was presented by AMERICAN CAST IRON PIPE COMPANY, based upon the asserted loss of payment for merchandise shipped to Cuba, to a company assertedly nationalized by the Government of Cuba,

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures

directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

The record in this case reflects the sale by claimant to Cia. Cubana de Electricidad of Havana, Cuba of goods totalling \$1,901.34, plus prepaid freight in the amount of \$91.39 increasing the total to \$1,992.73. Claimant asserts that it has not been paid although the goods were delivered to the Company at Havana.

Section 505(a) of the Act provides:

. . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On April 28, 1967, subsequent to the entry of the Final Decision herein, Cia. Cubana de Electricidad filed its own claim with the Commission (FCSC Claim No. CU-2578). The record in that claim now discloses that the said Cia. Cubana Electricidad was organized under the laws of the State of Florida. Therefore, this claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized,

expropriated, intervened, or taken by the Government of Cuba. Therefore the Commission is without authority to consider this claim, and it is hereby denied. (See the Claim of Anaconda American Brass Company, FCSC Claim No. CU-0112).

Dated at Washington, D. C.,
and entered as the Order
and Proposed Decision of the
Commission

OCT 4 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 11-6-67

Maia Anderson
Clerk of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Order and Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)